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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Transportation (Commonwealth Transportation Board)
Virginia Administrative Code (VAC) citation	24 VAC 30-151-10
Regulation title	Land Use Permit Manual
Action title	Repeal and Replace Existing Regulation (24 VAC 30-150-10) with Updated and Rewritten Regulation under same Title and New Number (VAC 24-30-151-10 et seq.)
Document preparation date	February 24, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Land Use Permit Manual (LUPM) sets forth the policies and procedures that VDOT uses to issue permits on behalf of the Commonwealth Transportation Board (CTB) to perform work on state-owned property under its jurisdiction along the system of state highways. Typically, this work includes activities such as installation of utilities, cable television services, fiber optic lines, or installation of driveway pipe. It is intended to protect the safety of VDOT and non-VDOT workers, motorists, and pedestrians, minimize the likelihood of property damage, as well as to preserve the integrity of the state highway system. This NOIRA replaces the one published in *The Virginia Register* (Volume 17 Issue 20) on June 18, 2001, which is being withdrawn. Work on this regulatory action was suspended due to unresolved policy issues, changes in personnel, and an agency reorganization. The LUPM has not been significantly revised in content since 1983. Due to the nature and scope of the changes anticipated, the existing regulation will be repealed and a replacement regulation with the same title will be promulgated.

The goals for the replacement regulation are the same as for the current regulation:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To ensure work done on state-owned right of way is performed safely and in accordance with good engineering principles to preserve the integrity of the road systems.
3. Is the regulation written clearly and understandably?

VDOT believes that the first two goals are being met. VDOT is obligated to ensure that the health and safety of VDOT and non-VDOT workers, pedestrians and motorists using the highways of the Commonwealth are preserved. Establishing a regulation that outlines allowed and prohibited activities and standards for performing work, minimizes the likelihood of liability for property damage, or injury or death from unsafe activities, is essential to the fulfillment of this goal. Furthermore, the benefits of the permit program discussed in the "Legal basis" section of this report also work to the advantage of the citizens and businesses of the Commonwealth.

Likewise, the regulation allows VDOT to establish policies, procedures, and standards that preserve the Commonwealth's investment in the transportation infrastructure by ensuring that work is performed in accordance with sound civil engineering principles. Otherwise, VDOT might incur significant costs to repair the road system, or replace substandard or unacceptable work.

The final goal will be addressed through the proposed changes anticipated to the replacement regulation, which will improve its readability and usefulness.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 33.1-12 (3) of the Code of Virginia gives the Commonwealth Transportation Board (CTB) the authority to make regulations concerning the use of the system of state highways. This authority is broadly stated, so there is significant discretion in establishing the criteria, policies, and procedures addressing work performed on state-owned right of way.

The CTB has used this authority to maintain the rights of way along the highways in a manner necessary to preserve the integrity, operational safety, and service of function of the roadway. The permit process allows VDOT to ensure that work performed on its right of way is performed with little or no damage to existing structures or utilities. Commercial and private users benefit from the cooperative system of land management, because a consistent permit program minimizes costs, allows more precise planning to perform the work, ensures fair treatment, and assists in facilitating residential and commercial development.

To accomplish its purpose, the regulation is broad in scope. For example, it addresses general and specific policies concerning placement of utilities (e.g., controlled access rights of way, etc.); installation of drainage pipe, commercial entrance curbing, landscape planting and trimming, miscellaneous permits and special agreements (e.g., agricultural or commercial use).

This regulation does not exceed minimum requirements of the state mandate, as none are specified by the statute.

Furthermore, 24 VAC 30-20-50 of the *General Rules and Regulations of the Commonwealth Transportation Board* provides that

No land use permit shall be issued until the applicant has complied with the restrictions, specifications, and fee requirements set forth in the Land Use Permit Manual (24 VAC 30-150-10 et seq.), where applicable, and pursuant to the Minimum Standards of Entrance to State Highways, (24 VAC 30-71-10 et seq.) when applicable. The manuals referred to are those prepared and published by the board or commissioner and kept on file in the central, district, and resident offices of the department, changes to which must be adopted or ratified by the board.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

At present, based on the results of its review, the Local Assistance Division anticipates the following revisions:

- Reformatting the regulation to eliminate redundant or obsolete text, rewrite the retained text, update new division names and work titles associated with a 2002 reorganization of the agency, and rearrange sections to improve readability and comprehension; this step should reduce the size of the regulation significantly (in its current form, it is over 250 pages in length);
- Adding a section to define words and terms used in the regulation;
- Updating technical documents incorporated by reference;
- Updating policies and procedures (e.g., Utility Accommodation Policy, calculation and payment of fees, etc.)
- Revising the regulation as needed to address treatment of subjects in a consistent manner with other VDOT regulations;
- Provide additional information on topics not addressed in the current regulation (e.g., Hazardous Materials/Waste Issues, Website addresses for forms, contacts, etc.)

If other revisions are suggested by internal or external parties during the APA amendment process, VDOT will address them at the appropriate step in the process.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There is no substitute for a regulation that addresses the subject. It is not feasible for VDOT to operate without some type of regulatory framework (including consistent standards and procedures, as well as violations of the regulations and remedial actions) to protect the state highway system for which it has a responsibility to maintain. As stated previously, commercial and private users benefit from the cooperative system of land management, because a consistent permit program minimizes costs, allows more precise planning to perform the work, ensures fair treatment, and assists in facilitating residential and commercial development. Furthermore, protection of the health, safety, and welfare of the public is a legitimate government purpose.

Therefore, VDOT has determined that a regulation is the least burdensome way to achieve its stated purpose.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

This regulation has no effect on the family or family stability.

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

VDOT received no public input as a result of the Notice of Periodic Review published in *The Virginia Register*, so no response was prepared. The Local Assistance Division plans to consult with other VDOT divisions whose activities are affected by the Land Use Permit Manual to ensure consistency of policy and practices in the proposed revision.

VDOT believes that this regulation is necessary for the protection of public health, safety, and welfare, because of its direct relationship to land development in the Commonwealth, as well as its relationship to preserving the structural integrity of the Commonwealth’s infrastructure. As mentioned in the discussion under “Alternatives,” commercial and private users benefit from the cooperative system of land management, because a consistent permit program minimizes costs, allows more precise planning to perform the work, ensures fair treatment, and assists in facilitating residential and commercial development. Furthermore, the permit provisions and related policies help ensure that work is performed within state-owned right of way safely and with due attention to proper civil engineering techniques and principles to avoid damage to the road systems. VDOT considers preservation of the road system to be essential to sound stewardship of public funds.

Once the regulatory action covered by this NOIRA is completed, the regulation’s clarity of language and understandability to those who will administer it, as well as those who will be regulated by it, will be improved.